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BANK OF AMERICA, N.A.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODNEY ALVARADO and JASON  
TOWNSEND, etc.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A.,  
Defendant.

Case No.: 3:09-cv-01202-WHA

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF DEFENDANT'S  
MOTION TO DISMISS**

Date: May 14, 2009  
Time: 8:00 a.m.  
Judge: Hon. William H. Alsup  
Courtroom: 9, 19th Floor

Complaint Date: November 25, 2008  
Trial Date: Not set

Accompanying Document: Motion, Notice  
and Supporting Memorandum

In support of its motion to dismiss or transfer, defendant Bank of America, N.A.  
respectfully requests that the Court take judicial notice of the following documents pursuant to  
Fed. R. Evid. 201(b)(2):

1. Bank of America, N.A.'s Online Banking and Transfers Outside Bank of America  
Service Agreement which is publicly available at <[http://www.bankofamerica.com/  
onlinebanking/index.cfm?template=service\\_agreement](http://www.bankofamerica.com/onlinebanking/index.cfm?template=service_agreement)>. A true and correct copy of the  
agreement is attached as Exhibit A.

2. A Frequently Asked Question ("FAQ") and answer which used to appear on Bank  
of America's website. Plaintiffs printed this copy of the FAQ from the website and submitted it

1 as Exhibit A to their Opposition to Defendant's Request for Judicial Notice which Bank of  
2 America filed in support of its Motion to Dismiss or Transfer while this case was pending in the  
3 Eastern District of California. The document is refiled in this Court as Docket No. 21,  
4 Attachment #2. A true copy of the FAQ and answer are attached as Exhibit B.  
5

6 DATED: April 2, 2009

SEVERSON & WERSON  
A Professional Corporation

*/s/ Jan T. Chilton*

By: \_\_\_\_\_  
Jan T. Chilton

Attorneys for Defendant  
Bank of America, N.A.

# EXHIBIT A


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## Online Banking

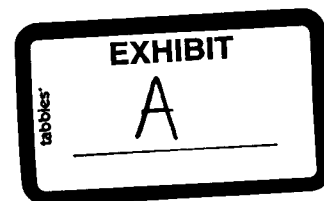
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## Online Banking and Transfers Outside Bank of America Service Agreement and Electronic Disclosure

Effective Date: January 20, 2009

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## I. General Description of Online Banking and Transfers Outside Bank of America Service Agreement

### A. What This Agreement Covers

This Agreement between you and Bank of America, N.A (Bank of America) governs the use of Online Banking services and the Transfers Outside Bank of America service. These services permit Bank of America customers (consumers, sole proprietors and other business customers) to perform a number of banking functions on accounts linked to the service through the use of a personal computer, including some credit card accounts and investment accounts with our affiliates, FIA Card Services, N.A., and Banc of America Investment Services, Inc. ("BAI"), respectively. Unless indicated otherwise by the context, "linked Bank of America accounts" or "linked accounts" refers to all of your accounts with Bank of America or its affiliates that you have linked to Online Banking or Transfers Outside Bank of America.

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### B. Accepting the Agreement

When you use any of the Online Banking services described in this Agreement or Transfers Outside Bank of America, or authorize others to use them, you agree to the terms and conditions of the entire Agreement.

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### C. Relation to Other Agreements

Your use of Online Banking services or Transfers Outside Bank of America may also be affected by the agreements between us for your linked Bank of America accounts. When you link an account to Online Banking services or Transfers Outside Bank of America, you do not change the agreements you already have with us for that account. For example, if you link a BAI investment account to Online Banking, the terms and conditions of your BAI customer agreement(s) and/or user agreement(s) do not change. Similarly, when you use Online Banking services to access a credit account, you do so under the terms and conditions we gave you in the agreement and disclosure for the credit account. You should review those agreements for any applicable fees, for limitations on the number of transactions you can make, and for other restrictions that might impact your use of an account with Online Banking services or Transfers Outside Bank of America.

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## II. Online Banking Services

Note: If you access Online Banking or Transfers Outside Bank of America through Personal Financial Management (PFM) software, or another indirect service, all of the features of Online Banking or Transfers Outside Bank of America may not be available, including, but not limited to, bill presentment. To access all of the features and services offered by Online Banking and Transfers Outside Bank of America, sign in directly through our Web site at [www.bankofamerica.com](http://www.bankofamerica.com).

### A. Online Banking for Consumers and Businesses

You may use Online Banking to:

- Transfer funds between your linked Bank of America accounts on either a one-time or recurring basis, including as a payment to a linked installment loan or mortgage
- Transfer funds from your linked Bank of America personal or sole proprietor accounts to most Bank of America personal or sole proprietor deposit accounts of other individuals
- View current balance information for your linked Bank of America accounts
- Review available transactions for your linked accounts
- Perform self-service account maintenance such as re-ordering checks, ordering copies of paid checks, requesting copies of monthly checking or saving statements, stopping payment on checks, changing address and phone, and changing your Online ID and Online passcode
- Send us secure online mail messages and questions regarding your Online Banking service

Some of the above services may not be available for certain accounts or customers.

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### B. Bill Payment Services (All functionality is not yet available for all customers. We will notify you when additional functionality is available for your Bill Payment service)

In addition to the Online Banking features listed above, if you are a Bank of America customer with a deposit account you may also:

- Make one-time or recurring payments online from your linked checking account(s), and money market deposit account(s) to companies or individuals (Payees) you select.
- Make one-time or recurring payments online from your linked Home Equity Line of Credit (HELOC) account(s) to a limited group of merchants (does not apply to HELOC accounts opened

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Feedback

in the state of Texas).

- Make one-time or recurring payments online from your linked Bank of America credit card account(s) to a limited group of merchants.
- Add personal checking or money market account(s) that you maintain at another financial institution through the Add An Account From Another Bank feature in the bill payment service. Make one-time or recurring payments online from such accounts to a limited group of merchants or a Bank of America loan or credit card account.
- Use the e-Bills feature to:
  - Receive bills from participating Payees
  - View Payee bill summary and bill detail information.

If you are a Bank of America credit card only customer you may:

- Make one time or automatic payments online from a deposit or money market deposit account maintained at another financial institution to your Bank of America credit card(s).
- Receive credit card e-Bills from Bank of America and view bill summary and detail information.

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#### **C. Additional Services Intended for Businesses**

We offer businesses the ability to create multiple Online IDs each with the access level you designate. In some circumstances, we also permit you to link the accounts of other businesses you own or control. See Section VII below for special registration procedures and applicable terms.

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#### **D. Online Banking Alerts**

We provide Automatic Alerts and voluntary Account Alerts.

1. Automatic Alerts are sent to you following certain changes made online to your Online Banking account, such as a change in your email or home address, telephone number, Online ID or passcode. You do not need to activate these alerts. Although you may have the option to suppress some of these Automatic Alerts, we strongly recommend that you do not do so since they are security-related.
2. Voluntary Account Alerts must be activated by you.
  - Account Alerts allow you to choose alert messages for your accounts. We may add new alerts from time to time, or cancel old alerts. If you have opted to receive an alert that is being canceled, we will notify you at least 30 days in advance.
  - Each alert has different options available, and you will be asked to select from among these options upon activation of your alerts service.
3. Both Automatic Alerts and voluntary Account Alerts are subject to the following.
  - Electronic alerts will be sent to the email address you have provided as your primary email address for Online Banking. If your email address or your mobile device's email address changes, you are responsible for informing us of that change. You can also choose to have alerts sent to a secondary email address, including a mobile device that accepts text messages. Changes to your primary and secondary email addresses will apply to all of your Alerts.
  - You understand and agree that your alerts may be delayed or prevented by a variety of factors. We do our best to provide alerts in a timely manner with accurate information. We neither guarantee the delivery nor the accuracy of the contents of any alert. You also agree that we shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance of an alert.
  - Because alerts are not encrypted, we will never include your passcode or full account number. However, alerts may include your name and some information about your accounts. Depending upon which alerts you select, information such as your account balance or the due date for your credit card payment may be included. Anyone with access to your email will be able to view the contents of these alerts.

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#### **E. Financial Management Services (not yet available for accounts located in all states and for all customers, we will notify you when available for your Online Banking service)**

We offer a variety of tools and services within Online Banking to help you better manage your finances. This includes obtaining balance information, manually entering scheduled transactions to estimate future balances, and tools to help you balance your statements. These tools and services are explained within Online Banking.

You agree:

- We may change these tools and services or add new ones without advance notice.
- You are responsible for the accuracy of all information you input.
- You will comply with any instructions or conditions for use of the services and tools as set forth within Online Banking.
- The tools and services are meant as aids to assist you with managing your accounts. They are not intended to provide legal, tax or financial advice.

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**F. ShopSafe®**

We provide the ShopSafe® service to allow you to create a unique, temporary credit card account number for online purchases at a specified merchant. The number links to the real credit card number, but keeps that number private and protected. The 16-digit ShopSafe number is used just like any other credit card account number.

ShopSafe allows you to set a dollar limit for purchases at a specified merchant. When we consider it appropriate, we may permit charges in addition to your preset dollar limit to allow for shipping, handling, and taxes, which may not have been taken into consideration at the time of the purchase.

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### **III. Description of Online Banking Services (does not apply to Transfers Outside Bank of America)**

#### **A. Transfers (does not apply to Transfers Outside Bank of America)**

- Processing of Transfer Requests
  - Transfers can be made in 2 ways, on a 1-time or recurring basis. One-time transfers may be immediate or scheduled for a future date. The recurring transfer feature may be used when a set amount is transferred at regular intervals. For example, a \$100 transfer from a checking to a savings account which occurs every 2 weeks.
  - One-time immediate transfers can be made from a linked Bank of America checking, savings, money market, line of credit, credit card or brokerage account to most linked Bank of America accounts.
  - Scheduled and recurring transfers can be made from a linked Bank of America checking, savings, money market, or credit card account to a linked checking or savings account.
  - Transfers can be made from a linked Bank of America personal or sole proprietor checking, savings, money market or line of credit account to most personal or sole proprietor checking, savings, or money market accounts of other Bank of America customers. Washington, Idaho, Military Bank and some other customer accounts, including those with foreign addresses, cannot be set up to receive funds.
  - Transfers from a deposit account (excluding BAI investment accounts) are immediately reflected in the account's available balance. Transfers from a credit card or a line of credit account are immediately reflected in the account's available credit amount.
- Scheduled and Recurring Transfers
  - Transfers scheduled for a weekend or a non-bank business day will be processed on the prior bank business day. All other scheduled and recurring transfers will be processed from the funding account at the beginning of the business day requested.
- Transfers to Credit Accounts
  - Funds transferred as a payment to a credit card, line of credit, installment loan or mortgage account before 11:59 p.m. ET will be credited with the date the payment is submitted. Transfer payments submitted after 11:59 p.m. ET will be credited with the next day's date. Updates to account balances, funds availability, and transaction posting may take up to 2 bank business days.
- Transfers to Deposit Accounts
  - For accounts located in any state except California, funds transferred to a deposit account (excluding transfers from a credit card or BAI investment account) prior to 10:45 p.m. ET on a bank business day will appear with the same day's date in the deposit account transaction history and are available to cover payments withdrawn from the deposit account overnight (such as checks and direct debits). Transfers submitted after 10:45 p.m. ET or on a non bank business day will appear with the following business day's date in the deposit account transaction history and are available to cover payments withdrawn from the deposit account on the following business day.
  - For accounts located in California, funds transferred to a deposit account (excluding transfers from a credit card or BAI investment account) prior to 10:45 p.m. PT on a bank business day will appear with the same day's date in the deposit account transaction history and are available to cover payments withdrawn from the deposit account overnight (such as checks and direct debits). Transfers submitted after 10:45 p.m. PT or on a non bank business day will appear with the following business day's date in the deposit account transaction history and are available to cover payments withdrawn from the deposit account on the following business day.
  - All transfers submitted to a deposit account (such as checking, savings, money market), except for transfers from a BAI investment account, are immediately reflected in the account's available balance.
  - Transfers to a deposit account from a BAI investment account, submitted before 1:30 p.m. ET, are reflected in the deposit account's available balance at the beginning of the next bank business day. Transfers submitted after 1:30 p.m. ET or on a non bank business day are reflected in the deposit account's available balance at the beginning of the second bank business day following the day the transfer was submitted.
- Transfers to or from BAI Investment Accounts
  - Transfers submitted to or from a BAI account before the cut-off time of 1:30 p.m. ET on a bank business day are posted to your BAI account at the beginning of the next bank business day. All transfers submitted after the cut-off time or on a non bank business day are posted to your BAI account at the beginning of the second bank business day following the day the transfer was submitted.

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**B. Online Banking Bill Payment Processing (All functionality is not yet available for all customers. We will notify you when additional functionality is available for your Bill Payment service)**

Bank of America customers with a deposit account may use the Bill Payment product in the following manner:

- Payments can be scheduled from linked checking, and money market savings, and HELOC accounts. (Does not apply to HELOC accounts opened in Texas.)
  - Payments can be scheduled from linked Bank of America credit card accounts. These bill payment transactions: (a) will not be processed on the Visa or Mastercard networks; (b) are Purchases which enjoy a grace period (if any) under the terms of your Credit Card Agreement; (c) do not earn rewards or points; and (d) have limited dispute rights, such as whether the payment was actually made. You cannot dispute the goods or services already purchased.
  - Payments can be scheduled from a personal checking or money market savings account maintained at another financial institution that you have added through the bill payment service. You certify that any account you add through the bill payment service is an account from which you are authorized to make payments, and any payment you make using the bill payment service will debit an account that you are legally authorized to use. When you add an account maintained at another financial institution, you do not change the agreements you have with that financial institution for that account. You should review those agreements for any applicable fees, for limitations on the number of transactions you can make, and for other restrictions that might limit you use of the account with the Bill Payment service.
- Payments can be entered as a 1-time transaction up to a year in advance, recurring transactions or as payments that are automatically scheduled upon the receipt of an electronic bill (e-Bill).
- Payments entered on our system before 5:00 p.m. ET on a bank business day will be scheduled and begin processing on the same bank business day. Payments that are entered after this cut-off time or on a day that is a non-bank business day will be scheduled and processed the next bank business day.
- Scheduled recurring payments that fall on a weekend or a non-bank business day will be processed on the prior bank business day.
- You authorize us to make payments in the manner we select from the following methods:
  - Electronic transmission. Most payments are made by electronic transmission.
  - Corporate check - This is a check drawn on our account or the account of our vendor. If a Payee on a corporate check fails to negotiate the check within 90 days, we will stop payment on the check and recredit your account for the amount of the payment.
  - Personal check - This is a check drawn on your account based on your authorization under this Agreement.
- Scheduling Bill Payments
  - The scheduled delivery date is the date you enter for the payment to be delivered to the Payee. For payments made by electronic transmission or corporate check, the payment amount will be debited from, or charged to the account that you designate on the scheduled delivery date. If the scheduled delivery date is a weekend or non-bank business day, then the delivery date will be the prior bank business day. For payments made by personal check, the account you designate will be debited when the check is presented to us for payment. In most cases, this will be on or after the scheduled delivery date.
  - For payments to a Bank of America credit card, loan, line of credit, or mortgage, Bank of America will process and credit the payment to the appropriate account effective the same business day, provided the payment is scheduled prior to the 5:00 p.m. ET cut-off.
  - When you attempt to schedule a payment, we will inform you of the earliest available delivery date. To assure timely payment and obtain the full benefit of the Online Banking Guarantee, you must schedule payments and your account must be in good standing at least four (4) bank business days before the payment due date. If you do not, or if for any reason your account is not in good standing, you will be fully responsible for all late fees, finance charges or other action taken by the Payee. If we are unable to complete the payment because of insufficient funds in your account or some other reason, we will send you an alert to the email address you have provided with this Agreement. We will also notify you if your account is no longer in good standing and eligible to be used for bill payments. As indicated above, some payments may be made by personal check. Since we can't predict the exact date that a personal check will be presented to us for payment, please make sure you have sufficient funds in your account beginning a few days before your scheduled delivery date and keep such funds available until the payment is deducted from your account.

Bank of America credit card only customers may use the Bill Payment product in the following manner:

- Payments to your Bank of America credit card account can be scheduled from deposit or money market deposit accounts maintained at another financial institution.
- Payments can be entered as a 1-time transaction up to a year in advance, or as payments that are automatically scheduled upon the receipt of an electronic bill (e-Bill).
- Payments entered on our system before 3:30 p.m. ET on a bank business day will be applied to your credit card account on the same bank business day. Payments entered after this cut-off or on a day that is a non-bank business day will be scheduled and processed on the next bank business day. For all entries, the time is recorded on our computer controls.
- The payment date will default to the current bank business day prior to the 3:30 p.m. ET cutoff time.
- If the financial institution upon which your payment is drawn rejects, refuses, or returns the payment, the payment to your Bank of America credit card will be reversed and you may incur late payment or other fees. The institution holding your deposit account may impose a returned item or other fee. See your credit card and deposit account agreements for details.

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**C. Limitations and Dollar Amounts for Transfers and Payments (does not apply to Transfers Outside Bank of America)**

Transfers and Payments made using Online Banking are subject to the following limitations:

- Bill payments can be for any amount between \$1.00 and \$99,999.99.
- One-time immediate transfers between linked Bank of America accounts can be for any amount between .01 and \$999,999.99, except that a transfer from a BAI account may not exceed \$249,999.99.
- Transfers submitted to the accounts of other Bank of America customers may not total more than \$1,000 during any 24-hour period or \$2,500 during any 7-day period. In addition, we may limit the total amount of money that any Bank of America customer can receive through these transfers. Note: If you are a Private or Premier customer, you may have higher limits for this type transfer. Please contact your Relationship or Client Manager for more information on your limits.
- Scheduled and recurring transfers between linked Bank of America accounts can be for any amount between \$0.01 and \$99,999.99.
- All transfer limits are subject to temporary reductions to protect the security of customer accounts and/or the transfer system.
- At our discretion we may refuse to process any transaction that exceeds any of the above limits. In this case, you are responsible for making alternate arrangements or rescheduling the payment or transfer within Online Banking.

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**D. Transfer/Payment Authorization and Sufficient Available Funds**

- You authorize Bank of America to withdraw, debit or charge the necessary funds from your designated account in order to complete all of your designated transfers and payments.
- You agree that you will instruct us to make a withdrawal only when a sufficient balance is or will be available in your accounts at the time of the withdrawal.
- You agree that you will instruct us to make a bill payment transaction from a Bank of America credit card account only when such account is in good standing and has sufficient credit available at the time of the scheduled transaction.
- The completion of a transfer or payment is subject to the availability of sufficient funds (including any overdraft protection plans) at the time the transaction is posted. If enough funds to complete the transfer or payment are not available, we may either (i) complete the transaction and overdraw the account or (ii) refuse to complete the transaction. In either case, we may charge a non-sufficient funds (NSF), returned item, overdraft, or similar fee. Please refer to the applicable account agreement and fee schedule for details. If you schedule a payment from an account maintained at another financial institution and there are insufficient funds in that account, you may be charged a fee by that financial institution.
- At our option, we may make a further attempt to issue the payment or process the transfer request.
- Bank of America is under no obligation to inform you if it does not complete a payment or transfer because there are non-sufficient funds or credit in your account to process the transaction. In this case, you are responsible for making alternate arrangements or rescheduling the payment or transfer within Online Banking.

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**E. Canceling Transfers and Payments (does not apply to Transfers Outside Bank of America)**

- Bill Payments
  - In order to cancel a payment (including a payment you scheduled from an account maintained at another financial institution) you must sign into Online Banking and follow the directions provided on the Bill Pay screens. The cancel feature is found in the Payment History or Recurring Payments sections of Online Banking.
  - Future-dated payments can be cancelled prior to 5 p.m. ET on the third bank business day prior to the scheduled delivery date.
- Transfers
  - You cannot cancel a 1-time immediate transfer after it has been submitted in Online Banking and the information has been transmitted to us.
  - Future-dated and recurring transfers can be canceled prior to midnight ET on the bank business day prior to the date the transfer is scheduled to be made. If the transfer's status is In Process or Processed, you can no longer cancel it. After you cancel a future-dated transfer, the status changes to Canceled. Canceled transfers remain under Review Transfers.

**Alternative Method**

Note: The easiest and most convenient way to cancel a payment or transfer is through the method described above. However, you may request to cancel a scheduled or recurring payment or a future-dated transfer by calling us at:

- For accounts located in any state except California: **1.800.933.6262**
- For accounts located in California: **1.800.792.0808**
- If you are calling from outside of the continental U.S., call us collect at: **1.925.681.7600**

We must receive your request three (3) bank business days or more before the payment or transfer is scheduled for processing. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. If you call or write to cancel a payment or transfer that is Pending, you will be charged for a stop payment in accordance with the agreement for the appropriate linked account.

[^ Back to Top](#)**F. Our Liability for Failure to Cancel or Stop the Transfer or Payment**

If you attempt to cancel a payment or transfer in accordance with the above instructions and we do not do so, we will be liable for your losses or damages.

[^ Back to Top](#)**G. E-Bills**

E-Bills is a feature of the Bill Pay service that enables you to receive bills electronically from participating Payees.

- **Approval of e-Bills**  
Participating Payees establish their own criteria for reviewing requests to receive e-Bills and have sole discretion to accept or decline your request. We do not participate in this decision. Participating Payees generally take up to five (5) bank business days to approve an e-Bill set-up request.
- **Accessing e-Bills from a Third Party**  
In some cases we obtain the e-Bill from the web site of the Payee. To do so, we will ask you for information needed for this purpose, such as any required password. When you provide this information, you authorize us to access the third party web site to retrieve the account information on your behalf, and you appoint us your agent for this limited purpose.
- **Timely Delivery of e-Bills**  
We take no responsibility if a Payee does not provide the necessary data to forward an e-Bill in a timely manner. If you do not receive a bill, it is your responsibility to contact the Payee directly. We are not responsible for any late charges or other adverse consequences. Any questions regarding your bill details should be directed to your Payee.
- **Stop e-Bills**  
All parties have the right to cancel the service at any time. We will notify you if Bank of America or a Payee discontinues/stops e-Bills. If you request that an e-Bill be discontinued, we require seven (7) bank business days for the Payee to receive and process the request.
- **Privacy**  
When you establish e-Bills with a participating Payee you will provide certain information, that will be forwarded onto the Payee to complete your enrollment. If you have concerns about the future use of this information you should contact your Payee directly.

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When you first set up your Online ID, we will link all of your eligible Bank of America accounts. If you open an additional eligible account at a later date, we will link your new account to Online Banking, unless you instruct us not to do so. If you want to limit the accounts linked or the activity level assigned to an account, please call us at 1.800.933.6262 (1.800.792.0808 for accounts located in California) and a representative will discuss the available options with you.

[^ Back to Top](#)**I. Activity Levels for Linked Accounts**

Currently there are 3 activity levels that can be assigned to your linked accounts:

- **View** - This level allows you to obtain current account balance and transaction information. This level does not allow transfer of funds between linked accounts. However, for linked BAI investment accounts, you may be able to perform investment activities (including trading) by linking directly to the BAI site.
- **Inquiry** - This level allows you to obtain current account balance and transaction information. This level does not allow transfers of funds from this account to any linked accounts.
- **Financial** - This level allows you to obtain account information and transfer funds between linked accounts, as well as to add Bill Pay services, and certain other banking services.

When you first use Online Banking, all of your linked accounts are assigned the activity level of "financial." If any additional accounts are linked to Online Banking, it will automatically be assigned to the activity level of "financial." If you want to change the activity level assigned to your linked accounts, please call us.

- For accounts located in any state except California: **1.800.933.6262**
- For accounts located in California: **1.800.792.0808**
- If you are calling from outside of the continental U.S., call us collect at: **1.925.681.7600**

[^ Back to Top](#)**IV. Other Terms and Conditions****A. Monthly Service Charge**

- There is no monthly service charge for accessing your linked accounts, or for paying and receiving bills, with the Online Banking service.

**Note:** For Personal Financial Management programs (such as Quicken®) used to access Online Banking with Bill Pay service -- There is a \$9.95 monthly service charge for Consumer customers and a \$14.95 charge for Business customers. We waive this charge if you have a Master Relationship Account (MRA), Preferred, Money Manager, Advantage, Versatel, or Prima account linked to your service, you are a Private Bank or Premier Banking client, or you are enrolled in the Online Banking Business Suite (OLBS).

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#### B. Other Charges

You should note that depending on how you access Online Banking or Transfers Outside Bank of America, you might incur charges for:

- Normal account fees and service charges.
- Any Internet service provider fees.
- Purchase of computer programs such as Personal Financial Management (PFM) software.
- Payments or transfers made through Online Banking services from a savings or money market account may result in an excess transaction fee. See your savings or money market account for details.
- Additionally, fees may be assessed for added self-service features available through Online Banking customer service, such as stop payment requests, check copy orders and account statement copy orders. Please consult your deposit account agreements to see if your accounts are subject to these fees.
- An NSF-fee, returned item, overdraft or similar fee may also apply if you schedule payments or transfers and your available balance is not sufficient to process the transaction on the date scheduled.
- We may charge you a research fee of \$20 per hour for an inquiry about a transaction that occurred more than 180 days before the date you make the inquiry. This fee will be waived if we determine that an error occurred.

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#### C. Service Hours

Online Banking services and Transfers Outside Bank of America are available 365 days a year and 24 hours a day, except during system maintenance and upgrades. When this occurs, a message will be displayed on-line when you sign on to Online Banking. Our Call Centers are available from 7:00 a.m. to 10:00 p.m. ET (for California accounts, from 7:00 a.m. to 10:00 p.m. PT), seven (7) days a week excluding bank holidays. You may also write us at:

For Accounts located in any state except California	For accounts located in California:
Bank of America Electronic Banking Services TX1-854-06-12 P.O. Box 655961 Dallas, TX 75265-9964	Bank of America Electronic Banking Services CA4-701-02-75 P.O. Box 37000 San Francisco, CA 94137

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#### D. Business Days

For Online Banking services and Transfers Outside Bank of America, our business days are Monday through Friday, excluding bank holidays. For BAI investment accounts only, all stock exchange closures and holidays will be observed (such as Good Friday) as well as the bank holidays.

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#### E. Participation by Payees

Occasionally a Payee may choose not to participate in Bill Pay, or may require additional information before accepting payments. We will work with these Payees to encourage them to accept an electronic or check payment from the Bank. If we are unsuccessful, or if we determine that the Payee cannot process payments in a timely manner, we may decline future payments to this Payee. In the unlikely event that this occurs, we will promptly send you a notice. Any obligations that you wish to pay through Online Banking with Bill Pay must be payable in U.S. dollars to a Payee located in the United States. We reserve the right to restrict categories of Payees to whom payments may be made using the service. You should not use the service to make:

- Tax payments
- Court-ordered payments
- Payments to settle securities transactions

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#### F. Canceling Your Online Banking

If you choose to cancel your Online Banking services, any unprocessed payments will be canceled. We recommend that you cancel any scheduled payments prior to notifying us that you are discontinuing the service. Bank of America will cancel any scheduled payments within two (2) bank business days from the date we receive your request to discontinue the service. If you close your primary checking account, or if it's no longer linked to your service, your Online Banking service will end, and any unprocessed payments will be canceled. If you cancel your Online Banking services, Transfers Outside Bank of America will also be canceled.

[^ Back to Top](#)**G. Joint Accounts**

When your Online Banking service is linked to one or more joint accounts, we may act on the verbal, written or electronic instructions of any authorized signer. Joint accounts using the same Online ID will be identified as one service.

[^ Back to Top](#)**H. Changes to Agreement**

We may change this agreement at any time. For example, we may add, delete or amend terms or services. We will notify you of such changes by mail or electronic message. If you initiate any transfer of funds or bill payment through your Online Banking services or make any Transfers Outside Bank of America after the effective date of a change, you indicate your agreement to the change.

[^ Back to Top](#)**I. Cancellation**

Your Online Banking services and Transfers Outside Bank of America remain in effect until they are terminated by you or Bank of America. You may cancel your service at any time by notifying us of your intent to cancel in writing, through Online Banking secure mail, or by calling Online Banking customer service at 1.800.933.6262 (all states except California) and 1.800.792.0808 (for California). This cancellation applies to your Online Banking services and Transfers Outside Bank of America, and does not terminate your Bank of America accounts. We recommend that you cancel any scheduled payments prior to notifying us that you are discontinuing the service.

We may terminate your participation in Online Banking services for any reason, including inactivity, at any time. We will try to notify you in advance, but we are not obliged to do so.

[^ Back to Top](#)**J. Use of External Email Address**

With Online Banking services and Transfers Outside Bank of America, we may send messages to your external email address and notify you that responses to your payment inquiries or customer service inquiries are available, or as otherwise described within the Online Banking or Transfers Outside Bank of America services. If you subscribe to e-Bills service, we may also use external email to notify you that you have new bills. We cannot act on instructions sent by you from an external email address. You should use Online Banking secure mail to send instructions to Bank of America. If, for any reason your external email address changes or becomes disabled, please contact Bank of America immediately so that we can continue to provide you with automated messages. You may notify us of any changes to your external email address through the Customer Service tab within your Online Banking service.

[^ Back to Top](#)**K. Transfers from Money Market Deposit Accounts**

Federal regulations limit the number of preauthorized electronic fund transfers and telephone transfers - including Online Banking transactions - from money market deposit and savings accounts. You are limited to six (6) preauthorized electronic fund transfers, telephone transfers, checks and point-of-sale transactions per statement cycle. Of these six (6) transactions, you are limited to only three (3) transactions by check or point-of-sale. (For information on these accounts, see the applicable account agreement.) Each transfer or payment through the Online Banking services from your money market account is counted as one of the six (6) limited transfers you're permitted each statement period. We charge a fee for each transaction in excess of this limit. Payments to your Bank of America loans are counted toward this limit for money market accounts. We recommend that you not use a money market account as your bill payment account because of these restrictions.

[^ Back to Top](#)**L. Contact by Bank of America or Affiliated Parties**

No Bank of America or Payee employee, nor any company affiliated with Bank of America Online Banking or Transfers Outside Bank of America, will contact you via email or phone requesting your Online ID or online passcode. If you are contacted by anyone requesting this information, please contact us immediately.

[^ Back to Top](#)**M. Reporting Unauthorized Transactions**

For accounts located in any state except California: **1.800.933.6262**

For accounts located in California: **1.800.792.0808**

If you are calling from outside of the continental U.S., call us collect at: **1.925.681.7600**

For Accounts located in any state except California	For accounts located in California:
Bank of America Electronic Banking Services TX1-854-06-12 P.O. Box 655961 Dallas, TX 75265-9964	Bank of America Electronic Banking Services CA4-701-02-75 P.O. Box 37000 San Francisco, CA 94137

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#### N. Initiating Payment Inquiries

To initiate a payment inquiry, you may use Online Banking services to send the request via secure online mail. Or you may contact Online Banking Customer Service by calling 1.800.933.6262 (for accounts located in California call 1.800.792.0808) and following the voice prompts to speak to a customer service representative. If you are calling from outside of the continental U.S., call us collect at 1.925.681.7600

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#### O. Disclosure of Account Information

We may disclose information to third parties about you or your account or your transactions in the following instances:

- When it's necessary for completing transfers or bill payments, or to investigate or resolve a problem related to a transfer or payment
- To verify the existence and condition of your account for a third party, such as a credit bureau or merchant
- To comply with a government agency or court orders, or in connection with fraud prevention or an investigation
- If you give us your permission
- With our affiliates as permitted under Federal and applicable state laws
- On a closed account, if we reasonably believe you have mishandled it

For more information about our privacy and security practices and a link to our Privacy Policy for Consumers go to our Web site at <https://www.bankofamerica.com/privacy>.

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#### P. Account Statements

We report your Online Banking and Transfers Outside Bank of America transactions on the monthly statements for your linked accounts. A description of each transaction, including whom you paid, and the date and amount of the transaction will appear on your statement.

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### V. Additional Provisions Applicable Only to Consumer and Sole Proprietor Accounts

#### A. In Case of Errors or Questions About Your Electronic Transactions

Send us a secure online mail message or call us.

For accounts located in any state except California: **1.800.933.6262**

For accounts located in California: **1.800.792.0808**

If you are calling from outside of the continental U.S., call us collect at: **1.925.681.7600**

You may also write us at:

For Accounts located in any state except California	For accounts located in California:
Bank of America Electronic Banking Services TX1-854-06-12 P.O. Box 655961 Dallas, TX 75265-9964	Bank of America Electronic Banking Services CA4-701-02-75 P.O. Box 37000 San Francisco, CA 94137

Contact us immediately if you think:

- Your statement or transaction record is wrong
- You need more information about a transaction listed on your statement
- An unauthorized person has discovered your Online Banking passcode
- Someone has transferred or may transfer money from your account without your permission
- Bill payment transactions have been made without your authorization

We must hear from you no later than 60 days after we have sent the FIRST statement on which the problem or error appeared (or 90 days if the problem or error relates to a bill payment from an account maintained at another financial institution).

If you tell us verbally, we may require you to send us your complaint or question in writing or via

email within ten (10) bank business days (Online Banking customers may use secure online mail). When you contact us, please provide the following information:

- Your name and account number
- The date and dollar amount of the transaction in question
- The name of the Payee if the transaction in question is a payment
- The transaction number assigned by Online Banking, if available
- A description of the transaction about which you are unsure

Please explain as clearly as you can why you believe there is an error or why you need more information.

We will tell you the results of our investigation within 10 bank business days after we hear from you, and we will promptly correct any error we have made. If we need more time, however, we may take up to 45 days to investigate your complaint or question. In this case, we will provisionally credit your account within 10 bank business days for the amount you think is in error, so that you have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing, and we do not receive your letter in 10 bank business days, we reserve the right not to provisionally credit your account.

If we conclude there was no error, we will send you a written explanation within three (3) bank business days after we complete our investigation. You may request copies of the documents that we used in our investigation.

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#### **B. Limitation of Liability**

Tell us at once if you believe your Online Banking passcode has been compromised or if someone has transferred or may transfer money from your account without your permission. The best way to minimize your loss is to call us immediately. The unauthorized use of your Online Banking services could cause you to lose all of your money in your accounts, plus any amount available under your overdraft protection.

You will have no liability for unauthorized transactions if you notify us within 60 days after the statement showing the transaction has been mailed to you (or 90 days if the transaction was from an account maintained at another financial institution). If you do not, you may not get back any of the money you lost from any unauthorized transaction that occurs after the close of the 60-day period (or 90 days if the transaction was from an account maintained at another financial institution), if we can show that we could have stopped the transaction if you had notified us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we may extend the time periods.

When you give someone your Online Banking ID and passcode, you are authorizing that person to use your service, and you are responsible for all transactions that person performs while using your service. All transactions that person performs, even those transactions you did not intend or want performed, are authorized transactions. If you notify us that the person is no longer authorized, then only transactions that person performs after the time you notify us are considered unauthorized.

Transactions that you or someone acting with you initiates with fraudulent intent are also authorized transactions.

For your protection, sign off after every Online Banking session and close your browser to ensure confidentiality.

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#### **C. Our Liability for Failure to Complete Transactions**

If we do not complete a transaction to or from your account on time, or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. For instance, we will not be liable:

- If, through no fault of ours, you don't have enough available funds in your account (or available credit under your overdraft protection plan), or credit to cover the transaction or transfer
- If Online Banking services weren't working properly, and you knew about the malfunction when you started the transaction or transfer
- If circumstances beyond our control (such as fire or flood) prevented the transaction or transfer, despite reasonable precautions we've taken
- If there are postal delays or processing delays by the Payee
- There may be other exceptions not specifically mentioned

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### **VI. Additional Provisions Applicable Only to Business Accounts (other than Sole Proprietors)**

#### **A. Protecting Your Passcode**

You agree that we may send notices and other communications, including passcode confirmations, to the current address shown in our records, whether or not that address includes a designation for delivery to the attention of any particular individual. You further agree that Bank of America will not be responsible or liable to you in any way if information is intercepted by an unauthorized person, either in transit or at your place of business. You agree to: 1) keep your passcode secure and strictly confidential, providing it only to authorized signers on your account(s); 2) instruct each person to whom you give your passcode that he or she is not to disclose it to any unauthorized



person; and 3) immediately notify us and select a new passcode if you believe your passcode may have become known to an unauthorized person. **Bank of America will have no liability to you for any unauthorized payment or transfer made using your passcode that occurs before you have notified us of possible unauthorized use and we have had a reasonable opportunity to act on that notice.** We may suspend or cancel your passcode even without receiving such notice from you, if we suspect your passcode is being used in an unauthorized or fraudulent manner.

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#### **B. Acknowledgment of Commercially Reasonable Security Procedures**

By using Online Banking, you acknowledge and agree that this Agreement sets forth security procedures for electronic banking transactions that are commercially reasonable. You agree to be bound by instructions, whether authorized or unauthorized, which we implement in compliance with these procedures, unless you have given us prior notice of possible unauthorized use as described above (and we had a reasonable opportunity to act on such notice).

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#### **C. Limitation of Bank's Liability**

If we fail or delay in making a payment or transfer pursuant to your instructions, or if we make a payment or transfer in an erroneous amount that is less than the amount per your instructions, unless otherwise required by law, our liability shall be limited to interest on the amount that we failed to timely pay or transfer, calculated from the date on which the payment or transfer was to be made until the date it was actually made or you canceled the instructions. We may pay such interest either to you or the intended recipient of the payment or transfer, but in no event will we be liable to both parties, and our payment to either party will fully discharge any obligation to the other. If we make a payment or transfer in an erroneous amount that exceeds the amount per your instructions, or if we permit an unauthorized payment or transfer after we have had a reasonable time to act on a notice from you of possible unauthorized use as described above, unless otherwise required by law, our liability will be limited to a refund of the amount erroneously paid or transferred, plus interest thereon from the date of the payment or transfer to the date of the refund, but in no event to exceed 60 days' interest. If we become liable to you for interest compensation under this Agreement or applicable law, such interest shall be calculated based on the average federal funds rate at the Federal Reserve Bank in the district where Bank of America is headquartered for each day interest is due, computed on the basis of a 360-day year. **Unless otherwise required by law, in no event will Bank of America be liable to you for special, indirect or consequential damages including, without limitation, lost profits or attorney's fees, even if we are advised in advance of the possibility of such damages.**

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### **VII. Additional Services Intended for Businesses**

#### **A. Creating and Managing Users**

You may add additional users to your Online ID and provide each with a separate passcode. For each user, you may designate the activity level - Inquiry or Financial - for each linked account, with the exception of investment accounts, which can only be linked to your original Online ID.

You may also designate another user as an Administrator, which means that this user will also be able to designate additional users. You agree that, by granting Financial access, you will be allowing a user to transfer funds, perform account maintenance and view account transactions for the linked account. Inquiry access allows a user to view account transactions. If you select to enable Bill Pay for a user, that user will automatically have Financial-level access to all the accounts that you have set up for Bill Pay, and they will be able to pay bills using the Bill Pay feature. If you no longer are a person authorized on the signature card for each linked account to designate signers for each such account, the business has the obligation to inform Business Online Banking of the new individual or individuals with such authority. Such notice must be given separately from any other notices given to other Bank of America departments or banking centers, by calling us at 1.800.933.6262. You may also write us at:

**Bank of America  
Electronic Banking Services  
TX1-854-06-12  
P.O. Box 655961  
Dallas, TX 75265-9964**

**Bank of America will have no liability to you for unauthorized payments and transfers made using the passcodes you assign that occur before you have notified us of possible unauthorized use and we have had a reasonable opportunity to act on that notice.**

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#### **B. Linking Accounts of Additional Businesses**

If you also are authorized to enter into an Agreement for the Business Online Banking service for another business, and if you want to link the accounts of the other business to the accounts covered by this Agreement, you will need to agree separately to this Agreement for each other business. Upon doing so, you may link the accounts of the businesses so that you may elect, at your risk and that of the businesses, but not of the Bank, to use a common Online ID and passcode for Business Online Banking for all linked accounts. You should do this only if you are authorized to link the



accounts of the different business and to use all the functions of Business Online Banking for each business. You further agree to inform Bank of America if your authority over any linked account decreases. Bank of America is not liable if your authority over any account decreases until it is informed of the change in authority using the "Notice" requirements of this Agreement.

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### C. Contacting Bank of America

For general questions, to request cancellation of payments and transfers, or to report unauthorized transactions please call us at 1.800.933.6262. Business Online Banking Customer Service is available from 7:00 a.m. to 10:00 p.m., seven (7) days a week, excluding bank holidays. You may also write us at:

**Bank of America**  
**Electronic Banking Services**  
**TX1-854-06-12**  
**P.O. Box 655961**  
**Dallas, TX 75265-9964**

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## VIII. Transfers Outside Bank of America (applies only if you have signed up for this service - for personal accounts only)

- You must have Online Banking to use Transfers Outside Bank of America.
- Within Online Banking you may separately sign up for the option of transferring funds between your linked personal deposit accounts at Bank of America and certain deposit or investment accounts at other financial institutions. An Inbound transfer moves funds into an account at Bank of America from an account outside Bank of America. An Outbound transfer moves funds from an account at Bank of America to an account outside Bank of America. You will need to register each of your non-Bank of America accounts that you wish to use for these transfers. You agree that you will only attempt to register accounts for which you have the authority to transfer funds. Transfers may be 3-Business-Day or Next-Day Transfers.
  - Three-Business-Day Transfers: Funds will be debited the business day after you initiate the transfer, and will be credited on the third business day after you initiate the transfer.
  - Next-Day Transfers (limitations apply, see below for details): Funds will be debited and credited on the business day after you initiate the transfer.
- Cut-off Time: The cut-off time for 3-Business-Day Transfers is 12:00 midnight ET (9:00 p.m. PT). The cut-off for Next-Day Transfers is 7:00 p.m. ET (4:00 p.m. PT). Any three-business-day transfer made after the cut-off time will be initiated the next business day.
- Transfers Outside Bank of America can be initiated on either a 1-time or a recurring basis. One-time transfers may be immediate or scheduled for a future date. The recurring transfer feature may be used when a set amount is transferred at regular intervals. For example, a \$100 transfer from an account you own at another financial institution to your Bank of America checking account that occurs every 2 weeks.
- Immediate, 1-time future dated and recurring transfers will be available on Inbound transfers.
- Immediate transfers will be available on Outbound transfers. One-time future dated and recurring transfers are not available for Outbound transfers at the present time.
- One-time future-dated or recurring transfers scheduled for a weekend or a non-bank business day will be processed on the prior bank business day. All other one-time future-dated and recurring transfers will be processed from the account you own at another financial institution at the end of the business day requested.
- Future-dated and recurring transfers can be canceled prior to midnight ET on the bank business day prior to the date the transfer is scheduled to be made. However, if the transfer's status is In Process or Processed, you can no longer cancel it. After you cancel a future-dated transfer, the status changes to Canceled. Canceled transfers remain under Review Transfers. NOTE: Immediate transfers cannot be canceled once the transfer has been submitted.
- Alternative Method

Note: The easiest and most convenient way to cancel a payment or transfer is through the method described above. However, you may request to cancel a scheduled or recurring payment or a future-dated transfer by calling us at:

- **For accounts located in any state except California: 1.800.933.6262**
- **For accounts located in California: 1.800.792.0808.**
- **If you're calling from outside of the continental U.S., call us collect at: 1.925.681.7600.**

We must receive your request three (3) bank business days or more before the payment or transfer is scheduled for processing. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. If you call or write to cancel a payment or transfer that is pending, you will be charged for a stop payment in accordance with the agreement for the appropriate linked account.

If you attempt to cancel a payment or transfer in accordance with the above instructions and we do not do so, we will be liable for your losses or damages.

- Transfer fees may or may not apply, based on the Delivery Type of the transaction, to transfers with accounts you own at other financial institutions.
- Inbound Transfers:
  - There is no fee for transferring funds into the bank, regardless of the Delivery Type you choose.

- Outbound Transfers:
  - If you transfer money to accounts you own at other financial institutions, the following transfer fees will apply:
    - 3-business day processing - \$3
    - Next-day processing - \$10
- Transfers Outside Bank of America are subject to the following dollar limits:

Type Of Limit	3-Business-Day Transfer	Next-Day Transfer
<b>Inbound</b>		
Business Day	\$3,000	\$2,000
In Process	\$3,000	\$2,000
Monthly (rolling 30-day period)	\$6,000	\$5,000
<b>Outbound</b>		
Business Day	\$3,000	\$2,000
In Process	\$3,000	\$2,000
Monthly (rolling 30-day period)	\$6,000	\$5,000

- There is an additional limit of \$30,000 monthly (rolling 30-day period) for the combination of all types of transfers.
- The above limits apply to the total of all transfers of a specific type for all accounts. Any transfer initiated on a day that is not a business day counts toward the applicable limit for the next business day. A transfer remains "In Process" until fully processed and it will appear as "In Process" on your **Transfer Funds, Outside the Bank, Review Transfers** tab within Online Banking. Three-Business-Day Transfers typically remain In Process until the close of the third business day after the transfer is initiated, and, for Next-Day Transfers, until the close of the next business day after the transfer is initiated.
- Three-Business-Day Transfers are available to all customers, but you agree we may cancel, without prior notice, upon the occurrence of a "Disqualifying Event," as defined below. Next-Day Transfers are permitted only at our discretion, but you must have completed at least one 3-Business-Day Transfer involving the same non-Bank of America account no less than 60 days prior to the attempted Next Day Transfer. You may determine whether you have been approved for Next-Day Transfers by going to the **Transfer Funds** tab in Online Banking. Once approved, you will remain eligible for Next-Day transfers, unless we provide you with notice, as required by law.
- We may change your dollar limits at any time. Any decrease will be subject to notice, as required by law, but you agree that we may reduce your limits to the amounts stated above without prior notice upon occurrence of a Disqualifying Event.
- Each of the following is a "Disqualifying Event":
  - Any of your accounts with Bank of America are not current or are not in good standing.
  - You have had an overdraft, an over-limit item, or an item returned for insufficient funds with respect to any Bank of America account during the current or 3 prior calendar months.
  - You have had any prior Transfer Outside Bank of America between accounts at other financial institutions canceled, revoked, or uncompleted due to insufficient funds, revoked authorization, stopped payments, frozen accounts, or any similar reason.

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## IX. My Portfolio Service

### A. Relationship to Other Agreements

You may use My Portfolio to access services offered by Bank of America, its affiliates, or third parties not affiliated with Bank of America. You agree that when you use these services, you will be subject to any terms and conditions established by those third parties, including Bank of America, its affiliates or unaffiliated service providers, and that this Agreement does not amend any of those terms and conditions. You agree that only the third parties are responsible for such services, and if you have any problems with these third parties, you should contact them directly. Any service offered by Bank of America or any of its affiliates will display the name of the Bank or the affiliate and the Bank of America logo on the webpage.

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### B. Description of My Portfolio

My Portfolio is a personal information management service that allows you to better manage your information by consolidating it in one place. My Portfolio uses proprietary technology to allow you to retrieve, view, and maintain information you have available at various web sites you designate, but all within one convenient service. All of the accounts linked to your Access ID through Online Banking from Bank of America are automatically added to My Portfolio.

You may add information about accounts accessible at other web sites that you maintain at other institutions, including Banc of America Investment Services, Inc. When you use My Portfolio to access a third party web site you designate, you agree to the following: 1) You authorized Bank of America and its providers to access the third party web sites and accounts you designate to retrieve account information on your behalf, and you appoint us as your agent for this limited purpose. In addition, you hereby grant Bank of America and its providers as your true and lawful attorney-in-fact, with full power of substitution and resubstitution, for you and in your name, place and stead, in any and all capacities, to access third party web sites, retrieve account information, and use your information, for the purpose of accessing your accounts and operating My Portfolio, with full power and authority to do and perform each and every act and thing requisite and necessary to be done in

connection with such activities, as fully to all intents and purposes as you might or could do in person. 2) You represent that you are a legal owner of the accounts at third party web sites which you include in My Portfolio and that you have the authority to (i) designate us as your agent, (ii) user My Portfolio and (iii) give us your passwords, usernames, and all other information you provide. 3) YOU AGREE AND ACKNOWLEDGE THAT WHEN WE ACCESS AND RETRIEVE INFORMATION FROM THE THIRD PARTY WEB SITE, WE ACT AS YOUR AGENTS, AND NOT THE AGENTS OR ON BEHALF OF THE THIRD PARTY. 4) My Portfolio does not have the capability to initiate transactions affecting your financial accounts or provide notices or instructions affecting such financial accounts. When you access a third party web site through My Portfolio, you open a new browser window to directly connect you to the third party web site and submit information you have designated to allow further access to that site. Transactions and inquiries you initiate at such a site are not made through My Portfolio, and we have no responsibility for such transactions. You are responsible for all fees charged by the third party in connection with such transactions and accounts, and you agree to comply with the terms and conditions of those accounts. If you have a dispute or question about any transaction on such site, you agree to direct these to the account provider. 5) Third party web sites shall be entitled to rely on the above authorizations, agency and power of attorney granted by you. 6) My Portfolio is not sponsored or endorsed by any providers of the third party accounts you access through My Portfolio, except for affiliates of Bank of America. 7) Balances shown on My Portfolio reflect the most recent refresh and may not be accurate if a refresh was not successfully completed or the information obtained during the refresh from the third party is otherwise not accurate or current. **Data and information is provided for informational purposes only, and is not intended for trading or transactional purposes.** You agree that we are not liable for any errors or delays in the content, or for any actions taken in reliance thereon. The services which you may be able to access through My Portfolio are services of the listed institutions. My Portfolio provides links to selected institutions for your convenience only. We do not endorse or recommend the services of any institution. The third party institution you select is solely responsible for its services to you. We are not liable for any damages or costs of any type arising out of or in any way connected with your use of the services of the institution. 8) You may also add information into My Portfolio for accounts not available at other web sites or which are not linked to My Portfolio. In such case, you are solely responsible for the accuracy of such information.

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#### C. Provide Accurate Information

You represent and agree that all information you provide to us in connection with My Portfolio is accurate, current and complete, and that you have the right to provide such information to us for the purpose of operating My Portfolio. You agree to not misrepresent your identity or your account information. You agree to keep your account information up to date and accurate.

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#### D. Proprietary Rights

You are permitted to use content delivered to you through My Portfolio only on My Portfolio. You may not copy, reproduce, distribute, or create derivative works from this content. Further, you agree not to reverse engineer or reverse compile any of My Portfolio technology, including but not limited to, any Java applets associated with My Portfolio.

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#### E. User Conduct

You agree not to use My Portfolio or the content or information delivered through My Portfolio in any way that would: (a) infringe any third-party copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including but not limited to use of My Portfolio to impersonate another person or entity; (c) violate any law, statute, ordinance or regulation (including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising); (d) be false, misleading or inaccurate; (e) create liability for Bank of America or its affiliates or cause us to lose (in whole or in part) the services of our third-party provider; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) may potentially be perceived as being obscene or pornographic or contain child pornography, or racially, ethnically, or otherwise objectionable; (h) interfere with or disrupt computer networks connected to My Portfolio; (i) interfere with or disrupt the use of My Portfolio by any other user; (j) access the information and content manually by request and not programmatically by macro or other automated means; or (k) use My Portfolio in such a manner as to gain unauthorized entry or access to the computer systems.

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#### F. Restriction on Commercial Use or Resale

You agree not to resell or make any commercial use of the services in My Portfolio.

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#### G. Your Indemnification of the Bank

Notwithstanding the language in Section V of this Online Banking Services Agreement, when you use My Portfolio, unless caused by our intentional misconduct or gross negligence, you agree to protect and fully compensate Bank of America and our service providers and affiliates from any and all third party claims, liability, damages, expenses and costs (including, but not limited to, reasonable attorneys fees) caused by or arising from your use of My Portfolio, your violation of this Addendum or your infringement, or infringement by any other user of your account, of any

intellectual property or other right of anyone.

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#### **H. My Portfolio Service Limitations**

We want to make your use of My Portfolio easy and productive, but we cannot always foresee or anticipate technical or other difficulties. These difficulties may result in loss of data, personalization settings or other My Portfolio interruptions. Notwithstanding the language in Section V of this Online Banking Services Agreement, with respect to My Portfolio, we do not assume responsibility for the timeliness, deletion, mis-delivery or failure to store any user data, communications or personalization settings.

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#### **I. Third Party Products and My Portfolio**

You agree to exercise caution when browsing on the internet and to use good judgment and discretion when obtaining or transmitting information or making purchases. From My Portfolio you may access or be directed to sites containing information or material that may be offensive or inappropriate to some people. We do not endorse and make no effort to review the content of these sites, nor are we responsible for their validity, legality, copyright compliance, or decency of the content contained in these sites. We retain the right (not the obligation) at our sole discretion to prevent access to any site from My Portfolio.

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#### **J. Privacy and My Portfolio**

Bank of America has a commitment to keeping information about you secure and confidential. Our Privacy Policy for Consumers clearly states our promise to carefully manage information about you and your relationship with our family of companies.

Through the My Portfolio service, you are able to aggregate information about your accounts from sources other than Bank of America or its affiliates so that you may view them in one online location. Bank of America will use this information to help optimize your personal use of this service, and to understand what product or service offers may be most beneficial to you. This information is provided all the protections outlined in our Privacy Policy for Consumers.

In addition to these protections, you may at any time choose to limit our use of information aggregated on My Portfolio from other institutions and accounts. You can select this option by going to the Set Your Privacy Preferences page on our Privacy and Security website at [www.bankofamerica.com](http://www.bankofamerica.com).

As always, Bank of America does not sell or otherwise share any Customer Information with marketers outside the Bank of America companies who may want to offer you their own products and services.

For more information on our Privacy Policy for Consumers, you can visit our Privacy and Security website at [www.bankofamerica.com/privacy](http://www.bankofamerica.com/privacy).

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#### **K. Changes or Cancellation**

Notwithstanding the language in Section IV.I. and V of this Online Banking Services Agreement, you may cancel your participation in My Portfolio by calling us at 1.800.933.6262. We reserve the right to change or cancel My Portfolio at any time without notice. We may also suspend your access to My Portfolio at anytime without notice and for any reason, including but not limited to your non-use of My Portfolio. You agree that we will not be liable to you or any third party for any modification or discontinuance of My Portfolio.

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#### **L. Third Party Beneficiary**

You agree that our providers may rely upon your authorization and grant of a limited power of attorney, the disclaimer of warranties, and the limitation of liability in My Portfolio Sections II. and IV., respectively, above, and such providers are, for the purposes of those sections, third party beneficiaries to this agreement, with the power to enforce those provisions as applicable.

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#### **X. Additional Services**

The following addendum will apply if you register for any of these additional services.

Online Business Suite Addendum

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# EXHIBIT B

[Back to top](#)**What is the earliest Deliver By date I can enter for a payment?**

When you schedule a payment, the **Deliver By** date that displays after you enter a payment amount is the earliest available date that the payment can be delivered.

[Back to top](#)**Why do delivery times vary?**

Delivery times vary depending on how your payment is delivered:

- In most cases we make electronic payments, which are delivered as soon as tomorrow.
- In an effort to deliver funds in the safest manner, occasionally a check will be issued instead of an electronic payment. If a payee is not set up to receive electronic payments, or, if we are unable to complete an electronic payment, the system prints and mails a check for you. These payments can take up to four days to deliver.

[Back to top](#)**When is the money for the payment withdrawn from my Pay From account?**

The funds for the payment are withdrawn from your account on or soon after the **Deliver By** date. You should always have funds available to cover the payment on the **Deliver By** date.

In most cases, we make payments electronically and the amount is automatically subtracted from your account on the **Deliver By** date. In other cases, we may elect to print and mail a check to arrive by the delivery date you requested. Your money will then leave your account when the payee cashes the check.

[Back to top](#)**What if I have previously scheduled automatic or future-dated payments?**

Payments that were scheduled using the **Send On** date, will be delivered on the **Send On** date, which is normally 1 - 5 days earlier than the **Deliver By** date. You may want to review your future and automatic payments and adjust your **Deliver By** date to the date that the payment is due. Doing so will allow you to keep the funds in your account longer.

[Back to top](#)**Are recurring payments scheduled automatically?**

Yes, recurring payments are automatically scheduled based on information you provide. To set up a recurring payment, go to the Automatic Payments Overview page and select a payee from the **Set up a recurring payment plan** list.

[Back to top](#)**Can e-Bills be paid automatically?**

Yes, e-Bills can be paid automatically when you set up an e-Bill initiated payment. E-Bill initiated payments is an optional feature that is available for most payees that can send e-Bills. You must have requested e-Bills from the payee and received your first e-Bill before you can set up an e-Bill Initiated payment.

If e-Bill Initiated payments is available, you can set it up by going to the Automatic Payments Overview page and selecting a payee from the **Set up an e-Bill initiated payment plan** list.

[Back to top](#)**Payment Problems****What do I do if the payee has not received my payment or credited my account?**

<https://bills.bankofamerica.com/wps8207/wps?rq=gf&sp=8207&oss=28e0074bd5d912a98caf914bd20d...> 7/22/2007

